

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY C. GITTO,
LORI ANN GITTO,
ORIX FINANCIAL SERVICES, INC.,
LaSALLE BUSINESS CREDIT, LLC,
CIT GROUP/EQUIPMENT FINANCING, INC.,
CITY OF LEOMINSTER, and
COMMONWEALTH OF MASSACHUSETTS,

Defendants.

Case No. 4:10-cv-40044-FDS

ORDER APPROVING RECEIVER'S SALE OF REAL PROPERTY
LOCATED AT 24 NANCY COURT, LEOMINSTER, MASSACHUSETTS,
AND DIRECTING DISTRIBUTION OF SALE PROCEEDS

Pursuant to the Non-Final Judgment (Docket No. 45) and the Order Appointing EXIT Realty Partners as Receiver (Docket No. 47) for the real property located at 24 Nancy Court, Leominster, Massachusetts ("the Nancy Court Property"), the plaintiff United States of America has filed a motion requesting an order approving the sale of the Nancy Court Property to Christie Posnak and Diane Posnak of New York, New York, for \$575,000.00 and directing the distribution of the proceeds of sale first to pay the Receiver's compensation, second to the City of Leominster for any property taxes due and owing for the Nancy Court Property, and third to the defendants Lori Ann Gitto, Orix Financial Services, Inc., the United States of America, and the Commonwealth of Massachusetts in accordance with the settlement agreement of the parties.

The Nancy Court Property is more fully described as:

A certain tract of land, containing 3.33 acres, situated in Leominster, Mass., on the northwesterly end of Nancy Court, being shown as Lot 3 on a plan of lots entitled "Definitive Subdivision Plan, Land in Leominster, Mass. owned by Charles N. Gitto, Jr. and Gary C. Gitto" and dated January 2, 1984, which plan is

recorded at the Worcester Northern District Registry of Deeds in Plan Book 272, Page 1, and being more particularly described as follows according to said Plan:

Beginning at the most northeasterly corner thereof on the Westerly end of Nancy Court at land of Kirt Wilbur;

Thence southwesterly by a curve to the left of radius 60 feet for a distance measured on the arc of 84.20 feet by Nancy Court;

Thence North 60° 15' West 390.00 feet by Lot 2 on said plan;

Thence South 29° 45' West 463.58 feet by Lot 2 to the northeasterly side of land of Massachusetts Bay Transit Authority;

Thence northwesterly by a curve to the right of radius 4,681.83 feet for a distance measured on the arc of 74.56 feet by last named;

Thence North 26° 59' 15" West 258.1 feet by last named to land of City of Leominster;

Thence North 26° 17' 30" East 339.2 feet by last named;

Thence South 60° 15' East 752.0 feet by land of Kirt Wilbur to the point of beginning.

Said tract is subject to a power line easement 100 feet in width.

Said tract is subject to a water line easement 25 feet in width along the second course above described as shown on the plan.

Together with an easement over and across Lot 2 as shown on said plan, which easement is more particularly described in a deed of easement from Charles N. Gitto, Jr. and Nancy M. Gitto to Gary C. Gitto, dated February 15, 1988 and recorded with the Worcester Northern District Registry of Deeds in Book 1650, Page 379.

In light of the submissions by the United States, the consent of all other non-defaulted parties except for defendant Gary C. Gitto, and the showing of good cause, the United States' motion is GRANTED. IT IS ORDERED as follows:

1. The sale of the Nancy Court Property to Christie Posnak and Diane Posnak of New York, New York, for \$575,000.00 is approved in all respects as the highest and best offer.

Upon receipt of the \$575,000.00 purchase price from Christie Posnak and Diane Posnak (or their agent), the Receiver is directed and authorized to execute and deliver a quitclaim deed (substantially in the form of the deed attached to the United States' motion) transferring title to the Nancy Court Property to Christie Posnak and Diane Posnak, free and clear of all of the rights, titles, claims, liens, and interests of the parties to this action.

2. The proceeds of \$575,000.00 shall be distributed as follows:

FIRST, to the Receiver, EXIT Realty Partners, in the amount of \$23,000.00, that amount consisting of a commission of \$23,000.00, being 4% of the gross sale proceeds, and an additional \$686.20 of expenses incurred in the marketing and sale of the property. Such compensation was previously approved by the Court. Docket No. 47 ¶ 4.

SECOND, to the City of Leominster, Massachusetts, in accordance with 26 U.S.C. § 6323(b)(6), for any real estate taxes due and owing on the Nancy Court Property as of the date of this order. As of the submission of the motion, the amount of property tax due was \$102,087.09, with an additional \$155.24 in water bills due as well.

THIRD, the remaining sales proceeds of \$449,071.47 shall be divided into three equal parts and distributed in accordance with the Non-Final Judgment as follows:

- a) To defendant Lori Ann Gitto in the amount of \$149,690.49;
- b) To defendant Orix Financial Services, Inc., in the amount of \$149,690.49;
- c) To the defendants United States of America and Commonwealth of Massachusetts in the amount of \$149,690.49. The United States and Massachusetts have agreed to divide this sum as follows: \$126,108.57 to the United States and \$23,581.92 to Massachusetts.


3. After execution and delivery of the quitclaim deed in accordance with ¶ 1 and distribution of the sale proceeds in accordance with ¶ 2, the Receiver shall be discharged.

4. In the event that Christie Posnak and Diane Posnak fail to pay over the full \$575,000.00 purchase price to the Receiver on or before the scheduled May 17, 2013 closing date or in the event that prior to May 17, 2013 Christie Posnak and Diane Posnak exercise any rights to terminate their obligation to purchase the Nancy Court Property as a result of the contingencies included in their offer, the Receiver may resume and/or continue to market the Nancy Court Property to other prospective buyers pursuant to the Order Appointing EXIT Realty Partners as Receiver (Docket No. 47).

5. After receipt of their respective portions of the sale proceeds, the United States and the Commonwealth of Massachusetts shall comply with ¶¶ 8-11 of the Non-Final Judgment (Docket No. 45).

IT IS SO ORDERED.

Dated: March 19, 2013



F. DENNIS SAYLOR IV
UNITED STATES DISTRICT JUDGE